

**PERFORMANCE AGREEMENT**

**Agreement Number:**

 **THIS STANDARD PERFORMANCE AGREEMENT** (“Agreement”) is entered into effective as of      , by and between Regents of the University of Minnesota, a Minnesota constitutional corporation, through its      , whose address for purposes of this Agreement is       (“University”), and       (“Artist”), whose address for purposes of this Agreement is      .

**1. Details of Event.** If any of the following are not applicable, please indicate “N/A;” if any of the following are contained on an attached rider, indicate: “See Attached Rider.”

 1.1 Event Title:       (“Event”)

 1.2 Artist Name:

 1.3 Date of performance:

 1.4 Type of performance:

 1.5 Location (“Location”) and Time of Event:

 1.6 Number and Length of sets:

 1.7 Payment amount (“Amount of Payment”):       and   /100 Dollars ($     )

 1.8 Check made payable to:

 1.9 Arrival time:       (“Arrival Time”)

 1.10 Load in time:

 1.11 Sound check time:

 1.12 Sound provided by:

 1.13 Doors open at:

 1.14 Admission prices:

 1.15 Contacts:

 1.15.1 For University: University of Minnesota

 Attn:

 Phone:

 Fax:

 Email:

 1.15.2 For Artist:

 Phone:

 Fax:

 Email:

 1.16 Equipment/Services to be provided by University:

 1.17 Equipment/Services to be provided by Artist:

 1.18 Contract provided by Artist:

 [ ]  Yes (if “Yes”, please attach to this Agreement

 [ ]  No

 1.19 Technical Rider or Addendum provided by Artist:

 [ ]  Yes (if “Yes”, please attach to this Agreement

 [ ]  No

 1.20 Expenses. Please indicate an amount in each box; or if there is no reimbursement, insert “None”:

 1.20.1 Lodging:       and   /100 Dollars ($     ).

 1.20.2 Meals:       and   /100 Dollars ($     ).

 1.20.3 Transportation:       and   /100 Dollars ($     ).

 1.21 Sale of Concessions by Artist:

 1.21.1 Revenue split of       percent (     %) to University.

 1.21.2 Revenue split of       percent (     %) to Artist.

**2. Timing of Payment:** If University’s Contract Administrator (identified in Agreement cover page) receives a signed copy of this Agreement at least two (2) weeks before the Event, University will provide payment to Artist in the form of a check immediately following the Event. If not, University will mail the check to Artist at the address indicated in the initial paragraph of this Agreement. Under no circumstances shall University be required to make any deposits to secure Artist’s performance.

**3. Amount of Payment.** Subject to the terms and conditions of this Agreement, University shall pay to Artist the amount indicated in Section 1.7 as total payment for the Event less required withholding taxes. All payments to be made by University shall be made by University of Minnesota check. No payments shall be made in cash. University may withhold the whole or part of any payments to Artist to such extent necessary to protect University from loss due to injury or damage to University personnel or property or third parties caused by the negligent acts and omissions of Artist, its employees and agents.

**4. Expenses for Lodging, Meals, and Transportation.** University’s reimbursement, if any, for Artist’s lodging, meals and transportation will be made as stated under Section 1.20.

**5. Taxes.**

 **5.1** **1099-NEC Form.** If required, University will report the Amount of Payment indicated under Section 1 (including any reimbursements paid by University) on a 1099-NEC Form.

 **5.2** **Minnesota Nonresident Entertainer Tax**. If Artist is not a resident of Minnesota, or a resident of North Dakota or Michigan who provides a properly completed Minnesota Form MWR, Reciprocity Exemption/Affidavit of Residency, University will withhold two percent (2%) of the gross compensation, as required by Minnesota Statutes, Section 290.9201 (“Non-Resident Entertainer Tax”) (see <http://www.revisor.leg.state.mn.us/stats/290/9201.html>). Gross compensation for purposes of Section 290.9201 includes all compensation or payments for expenses received under Section 1. University will not withhold Nonresident Entertainer Tax in the event the gross compensation is less than $600, or Artist is a speaker and the gross compensation received is less than $2,000. More information regarding the Nonresident Entertainer Tax may be found at https://www.revenue.state.mn.us/nonresident-entertainer-tax.

 **5.3** **Backup Withholding.** Artist who is a U.S. Resident must complete an IRS Form W-9 (Request for Taxpayer Identification Number) and provide it to University properly completed and signed. If Artist does not provide an IRS Form W-9 properly completed and signed, or if University determines that the form is not correctly completed, then the gross compensation paid under this arrangement is subject to backup withholding at the current rates mandated by the U.S. Government. A copy of IRS Form W-9 can be obtained from the Government at www.irs.gov.

 **5.4** **Federal Income Tax Withholding for Individuals who are Nonresident Aliens.** If Artist is not a resident for U.S. Income Tax purposes, payment may be subject to Federal income tax withholding in accordance with Internal Revenue Code Section 1441 and the Treasury Regulations promulgated thereunder. Tax Treaty Benefits may also be available to Artist if Artist has a U.S. Taxpayer Identification Number (TIN). A TIN is either a Social Security Number (SSN) or an Internal Revenue Service Taxpayer Identification Number (ITIN). Absent a Federal TIN there will be 30% withholding of gross compensation. This withholding requirement may also apply to agents or other entities that are treated as flow-through entities under the U.S. Treasury Regulations. The withholding may be available for Artist to use to pay federal income tax when Artist files a Foreign Individual Income Tax Return (Form 1040NR). Artist may find IRS Publication 515 entitled “Withholding of Tax on Nonresident Aliens and Foreign Entities” helpful in understanding these withholding requirements. A copy of form 1040NR and Publication 515 can be obtained from the IRS Website at [www.irs.gov](http://www.irs.gov).

**6. Contract Administrator.** Name, address, telephone number, fax number and e-mail address of University’s Contract Administrator is stated on the Agreement cover page. University may change its Contract Administrator by providing written Notice. University will only make payments to Artist that have been formally approved by University’s Contract Administrator.

**7. Hospitality.** University shall use good faith efforts to accommodate Artist’s reasonable hospitality requests as set forth in Artist’s contract, rider, or addendum, provided University determines that the expenses it would incur in fulfilling such requests are a prudent use of public funds. Artist further recognizes that University is prohibited by University of Minnesota Regent’s Policies from providing Artist with beer, wine or alcoholic beverage while on campus. Unless specified in Section 4 and above, transportation, meals and housing arrangements shall be the sole responsibility of Artist.

**8. Sponsors.** University reserves the right to engage sponsors for the Event. Artist may obtain sponsors for the Event; provided, however that the University reserves the right to approve all such sponsorships in writing.

**9. Event Technical Requirements.** If Artist has requested in an addendum, rider or contract attached to this Agreement that University supply sound equipment or stage lighting for the Event, University will use its reasonable efforts to provide it. If University is unable to obtain the exact equipment or lighting Artist requests, University and Artist will work together to find suitable replacement equipment. University does not warrant that the equipment requested by Artist will be sufficient for Artist’s specific needs. University shall not be responsible for any equipment requests not specifically stated in an addendum, rider, or contract attached to this Agreement.

**10. Arrival Time.** No later than the Arrival Time, prior to the beginning of the Event, Artist or its agent shall call University’s Contract Administrator to advise University of Artist’s expected time of arrival at the Location, where Artist will be staying, the expected time of arrival for the crew and or materials used for the performance, and the mode of transportation for the Artist, crew and materials. If Artist does not require a rehearsal, Artist shall make its whereabouts known to University’s designee at least three (3) hours prior to the beginning of the Event and shall be at the Location at least one (1) hour prior to the beginning of the Event.

**11. Advertising and Promotion of Event.** University shall have complete control over advertising, billing and promotion of Event. Artist agrees to furnish, at its own expense, advertising and promotional materials to the extent Artist has such materials available for distribution. At a minimum, Artist should include a publicity packet with photos and information on Artist for distribution. Artist hereby grants University the right to use Artist’s name, recorded voice, biographical materials, pictures, and likeness for advertising, promotion and publicity purposes in connection with Event. Artist shall not authorize or release any advertising or promotional materials relating to Event without the advance written consent of the University’s Contract Administrator. **Please Note:** For events at Northrop, program copy shall be provided by email in word format at least four (4) weeks prior to the Event.

**12. Control of Production.** Artist shall have control over the Event’s production, presentation and artistic performance; provided, however, that Artist shall not engage in any obscene behavior, nor shall Artist encourage or entice patrons to engage in violent, destructive or riotous behavior. Artist’s representative shall have authority in directing personnel operating lights and sound equipment during rehearsal and each performance. University retains the right to control all other aspects of the Event, including (i) sound levels and (ii) the right to stop the Event if, in University’s reasonable opinion, the audience is becoming uncontrollable.

**13. Reproduction of Performance.** Neither party may broadcast, photograph or record any portion of the Performance in any medium without the written consent of the other party; provided, however, that University shall be entitled to make an archival record of the Performance in any medium. University shall use reasonable efforts to deny entrance to any persons carrying audio or video recording devices, but University does not guarantee that recordings will not be made.

**14. Box Office Provisions.** University shall have complete control over operation of the box office. University shall have the right to set ticket prices, to sell tickets at a discounted price, or to give away tickets, as University deems appropriate.

**15. Approval of Other Performers.** University reserves the right to approve any other persons or acts to appear in conjunction with the Event and the right to determine the length and nature of their performances. University further reserves the right to have a master of ceremonies, welcoming speeches, introductions and/or ceremonies during intermission, at University’s sole discretion.

**16. Indemnification.** Artist agrees to release, indemnify, defend and hold harmless the University and its Regents, faculty members, students, employees, agents and contractors from all loss, cost and damage, including reasonable attorneys’ fees, proximately caused by Artist’s negligent or wrongful acts and omissions. Subject to applicable law, including, with regard to University, the Minnesota Tort Claims Act, each party will be solely responsible for all claims, actions, and direct damages caused by the responsible party’s negligence, willful wrongdoing or breach of this Agreement.

**17. Insurance.** At least 30 days prior to the Event, Artist shall provide University with a certificate of insurance or other acceptable evidence of insurance coverage as indicated below. If this Agreement is signed by Artist fewer than 30 days prior to the Event, Artist shall submit such evidence of insurance upon the signing of this Agreement.

 17.1. Check either (A) (B) or (C) below as applicable:

 [ ]  (A) Artist’s policy of Commercial General Liability Insurance with a minimum limit of $1,000,000 per occurrence; or qualified self-insurance subject to approval by University.

 [ ]  (B) Proof that Artist has purchased event liability insurance with a minimum limit of $1,000,000 per occurrence. Artist may purchase such insurance from the insurer of its choice, or at the following website address: https://tulip.ajgrms.com.

 [ ]  (C) State and other governmental agencies that are self–insured shall provide a letter stating that fact and the coverage limits for such insurance on departmental letterhead.

 17.2 Workers’ Compensation/Employers Liability, if applicable, to the extent required by law.

 17.3 All insurance provided under paragraph 17.1(A) and 17.1(B) shall be written by insurance companies with an A.M. Best rating of A-VII or better and licensed and authorized to do business in the State of Minnesota and shall name Regents of the University of Minnesota as an additional insured. Artist shall provide written notice to University if any of the required insurance coverage is canceled, modified or non-renewed before the end of the term of this Agreement. Artist shall maintain the insurance(s) described in this paragraph for the entire term of this Agreement.

## 18. Liability. UNIVERSITY SHALL NOT BE LIABLE FOR LOST PROFITS, WORK STOPPAGE, OR ANY OTHER SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES OF ANY KIND.

**19. Sale of Concessions by Artist.** Artist shall comply with University regulations regarding sales of concessions, which include but are not limited to programs, T-shirts, posters, CD’s, tapes, food and beverage. All concession sales shall be made by University with a revenue split of gross receipts (after University’s remittance of sales and other applicable taxes) from such sales of concessions as stated under Section 1.21. University in its sole discretion may refuse to allow the sale of any item provided by Artist. Artist shall not sell, distribute, dispense, advertise or promote any alcoholic or non-alcoholic beverages (or permit others to do the same) without University’s written consent, which consent University may withhold at its sole discretion. Artist shall comply with University policy regarding alcoholic beverages on campus.

**20. Cancellation of Event.** The Event may be canceled at the mutual agreement of the parties. In addition, either party may cancel the Event if the other party materially breaches this Agreement and fails to cure said breach within a reasonable time after notice of breach. The Event may also be canceled because of an act of God, public calamity, war, acts of terrorism, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine and other employee restrictions, or other similar event beyond either party’s reasonable control or other legitimate reasons beyond the party’s control (“Event of Force Majeure”). In the case of termination for Event of Force Majeure, neither party shall be responsible for any delays or failure to perform any obligation under this Agreement due to an Event of Force Majeure. Parties will refund any prepaid amounts or deposits.

For the avoidance of doubt, neither party shall be held liable or responsible to the other party nor be deemed to have defaulted under or breached this Agreement for cancellation or failure or delay in fulfilling or performing any obligation under this Agreement when such failure or delay is caused by or related to the current COVID-19 pandemic, including but not limited to ongoing or new quarantine orders; employee restrictions; event cancellations; University closure or policy changes; federal, state, or local government orders or advisories; and/or any other restrictions or advisories related to or resulting from the COVID-19 pandemic.

If University cancels the Event for a reason other than for Artist’s breach or an Event of Force Majeure or if Artist cancels the Event because of University’s breach, University’s total liability to Artist shall not exceed the Amount of Payment stated in Section 3 above. In no event shall University be liable for any indirect, consequential, incidental, lost profits or like expectancy damages arising out of this Agreement. If University cancels the Event for Artist’s breach or if Artist cancels the Event for a reason other than University’s breach or an Event of Force Majeure, University shall be entitled to collect from Artist all reasonable expenses incurred in connection with the Event.

**21. Exclusivity.** Artist shall not contract with a third party for a performance that will conflict with the Event contracted for herein. If Artist is a “national act,” Artist shall not contract to perform at another venue located within one hundred (100) miles of the Event Location within thirty (30) days of the date of the Event, unless University consents in writing to such additional performance.

**22. Parking.** Unless otherwise provided in this Agreement, Artist shall be responsible for parking its vehicles and for securing its vehicles while on campus. Artist shall abide by all parking rules and regulations of University. University shall not be liable for damages to Artist’s vehicles or contents within its vehicles unless such damage is caused by University employees or agents.

**23. Assignment.** Neither party may assign its rights under this Agreement without the prior written consent of the other party, which consent the other party may grant or withhold at its sole discretion.

**24. Notices.** All notices required by this Agreement shall be in writing and shall either be delivered personally, by certified mail, facsimile, or email to the parties at the addresses listed in the initial paragraph of this Agreement.

**25. Partial Invalidity of Agreement.** If any portion of this Agreement is deemed invalid or unenforceable by any court because it is unenforceable as written, such provisions shall be deemed revised to make it valid and enforceable to the maximum extent permitted by law. If the invalid or unenforceable clause cannot be so revised, it shall be stricken from this Agreement but the remaining provisions of this Agreement shall not be affected by such invalidity or unenforceability.

**26. Governing Law, Venue.** The laws of the state of Minnesota, with the exception of its conflict of laws principles, which would require application of the laws of another jurisdiction, shall govern the validity, construction and enforceability of this Agreement. All suits and causes of action relating to the construction, validity, performance and enforcement of this Agreement shall be in the courts of the State of Minnesota with venue in Hennepin County, Minnesota.

**27. Independent Contractor Status.** Artist is an independent contractor and not an employee, agent or partner of University. Artist shall not have legal authority to bind University in any way.

**28. Waiver.** Neither party’s failure to strictly enforce the terms of the Agreement on one occasion shall be deemed waiver by that party of the right to strictly enforce the terms of the Agreement in the future.

**29. Amendments.** Any changes or amendments to this Agreement must be in writing, initialed and dated by both parties to be valid.

**30. Authority to Execute Agreements.** The persons signing this Agreement on behalf of Artist and University represent and warrant that they have the legal authority to sign this Agreement and to obligate Artist and University to the covenants and conditions of this Agreement.

**31. Affirmative Action.** If the Event is subject to federal funds, the following language applies: If the price is in excess of $10,000, **University and Artist shall abide by the requirements of 41CFR 60-741.5(a), which prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.** If the price is in excess of $100,000**, University and Artist shall abide by the requirements of 41 CFR 60-300.5(a), which prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.**

**32. This Agreement Prevails in the Event of Conflict with Artist’s Contract or Artist’s Rider. To the extent that any of the terms and conditions contained in Artist’s contract or any other addendum or riders provided by Artist, or THEIR agent, contradict any of the terms of this Agreement, or impose additional obligations upon University, University expressly rejects such contradictory or additional terms and Artist agrees by any performance or other ACCEPTANCE of this Agreement that the terms contained in this Agreement shall control.**

**Regents of the University of Minnesota Artist**

By: By:

Name:       Name:

Title:       Title:

Date: Date: